

JURISDICTION

On December 18, 2001, Plaintiff filed an application for Supplemental Security Income ("SSI") benefits, alleging disability since October 19, 2001, due to residual limitations stemming from a left hip fracture and a right hand injury. (Administrative Record ("AR") 128-131, 163). Plaintiff's application for SSI was denied initially and on reconsideration.

On September 2, 2004, Plaintiff appeared before Administrative Law Judge ("ALJ") James Caulfield, at which time testimony was taken from Plaintiff and vocational expert Jeffrey Tittlefitz. (AR 45-101). On March 17, 2005, the ALJ issued a decision finding that Plaintiff was not disabled. (AR 15-24). The Appeals Council denied a request for review on February 22, 2006. (AR 7-10). Therefore, the ALJ's decision became the final decision of the Commissioner, which is appealable to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this action for judicial review pursuant to 42 U.S.C. § 405(g) on April 26, 2006. (Ct. Rec. 1).

STATEMENT OF FACTS

The facts have been presented in the administrative hearing transcript, the ALJ's decision, the briefs of both Plaintiff and the Commissioner and will only be summarized here. Plaintiff was 55 years old on the date of the ALJ's decision, earned a GED and has past work experience as a janitor, maid, food service worker, laundry room worker and dubbing machine operator. (AR 16, 164). Plaintiff indicated that she stopped working on October 19, 2001, the alleged onset date of disability, because she "[g]ot laid off, couldnt [sic] perform my job duties to my ability." (AR 163).

1 Plaintiff testified at the administrative hearing held on
2 September 2, 2004, that she last worked in October of 2001 as a
3 janitor for a four-month period. (AR 54). She indicated that she
4 worked full-time cleaning buildings, and the work consisted of
5 sweeping, vacuuming, emptying garbage cans, cleaning bathrooms and
6 wiping down desks, doors and mirrors in the offices. (AR 54-55,
7 85). She stated that the job ended, and she was laid off, due to
8 lack of work, but she also indicated that she could no longer keep
9 up with the work demand due to her physical condition. (AR 55,
10 56).

11 Plaintiff described her hip pain as pain which extends from
12 her hip into her groin and back of her leg when she overdoes it.
13 (AR 59). She indicated that housework, driving and walking, as
14 well as her work as a janitor, would be overdoing it. (AR 59).
15 She testified that, in October of 2001, she could be on her feet
16 for about 45 minutes before the pain would spread down her leg.
17 (AR 60). After 45 minutes she would need to take a 10 minute
18 break off her feet. (AR 60). At the time of the administrative
19 hearing, Plaintiff indicated that she could only be on her feet
20 for 25 to 30 minutes at a time. (AR 61-62). Plaintiff stated
21 that she also has pain when sitting, stemming from a 1995
22 automobile accident, and could sit no more than 30 minutes before
23 having a problem. (AR 67-68). When asked how long she could go
24 during an eight-hour day by alternating at will between sitting
25 and standing, Plaintiff indicated she could go about three and
26 one-half hours. (AR 96-97).

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1 Plaintiff testified that she continues to do housework,
2 including vacuuming, sweeping, laundry and dishwashing. (AR 68).
3 She stated that each day she spends four to five hours doing her
4 housework. (AR 68).

5 **SEQUENTIAL EVALUATION PROCESS**

6 The Social Security Act (the "Act") defines "disability" as
7 the "inability to engage in any substantial gainful activity by
8 reason of any medically determinable physical or mental impairment
9 which can be expected to result in death or which has lasted or
10 can be expected to last for a continuous period of not less than
11 twelve months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The
12 Act also provides that a Plaintiff shall be determined to be under
13 a disability only if his impairments are of such severity that
14 Plaintiff is not only unable to do his previous work but cannot,
15 considering Plaintiff's age, education and work experiences,
16 engage in any other substantial gainful work which exists in the
17 national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).
18 Thus, the definition of disability consists of both medical and
19 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156
20 (9th Cir. 2001).

21 The Commissioner has established a five-step sequential
22 evaluation process for determining whether a person is disabled.
23 20 C.F.R. §§ 404.1520, 416.920. Step one determines if he is
24 engaged in substantial gainful activities. If he is, benefits are
25 denied. 20 C.F.R. §§ 404.1520(b), 416.920(b). If he is not, the
26 decision maker proceeds to step two, which determines whether
27 Plaintiff has a medically severe impairment or combination of
28 impairments. 20 C.F.R. §§ 404.1520(c), 416.920(c).

1 If Plaintiff does not have a severe impairment or combination
2 of impairments, the disability claim is denied. If the impairment
3 is severe, the evaluation proceeds to the third step, which
4 compares Plaintiff's impairment with a number of listed
5 impairments acknowledged by the Commissioner to be so severe as to
6 preclude substantial gainful activity. 20 C.F.R. §§ 404.1520(d),
7 416.920(d); 20 C.F.R. § 404 Subpt. P App. 1. If the impairment
8 meets or equals one of the listed impairments, Plaintiff is
9 conclusively presumed to be disabled. If the impairment is not
10 one conclusively presumed to be disabling, the evaluation proceeds
11 to the fourth step, which determines whether the impairment
12 prevents Plaintiff from performing work he has performed in the
13 past. If Plaintiff is able to perform his previous work, he is
14 not disabled. 20 C.F.R. §§ 404.1520(e), 416.920(e). If Plaintiff
15 cannot perform this work, the fifth and final step in the process
16 determines whether Plaintiff is able to perform other work in the
17 national economy in view of his residual functional capacity and
18 his age, education and past work experience. 20 C.F.R. §§
19 404.1520(f), 416.920(f); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

20 The initial burden of proof rests upon Plaintiff to establish
21 a *prima facie* case of entitlement to disability benefits.
22 *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir. 1971); *Meanel v.*
23 *Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden is
24 met once Plaintiff establishes that a physical or mental
25 impairment prevents him from engaging in his previous occupation.
26 The burden then shifts to the Commissioner to show (1) that
27 Plaintiff can perform other substantial gainful activity and (2)
28 that a "significant number of jobs exist in the national economy"

1 which Plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498
2 (9th Cir. 1984).

3 **STANDARD OF REVIEW**

4 Congress has provided a limited scope of judicial review of a
5 Commissioner's decision. 42 U.S.C. § 405(g). A court must uphold
6 the Commissioner's decision, made through an ALJ, when the
7 determination is not based on legal error and is supported by
8 substantial evidence. See *Jones v. Heckler*, 760 F.2d 993, 995
9 (9th Cir. 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir.
10 1999). "The [Commissioner's] determination that a plaintiff is
11 not disabled will be upheld if the findings of fact are supported
12 by substantial evidence." *Delgado v. Heckler*, 722 F.2d 570, 572
13 (9th Cir. 1983) (citing 42 U.S.C. § 405(g)). Substantial evidence
14 is more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d
15 1112, 1119 n.10 (9th Cir. 1975), but less than a preponderance.
16 *McAllister v. Sullivan*, 888 F.2d 599, 601-602 (9th Cir. 1989);
17 *Desrosiers v. Secretary of Health and Human Services*, 846 F.2d
18 573, 576 (9th Cir. 1988). Substantial evidence "means such
19 evidence as a reasonable mind might accept as adequate to support
20 a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971)
21 (citations omitted). "[S]uch inferences and conclusions as the
22 [Commissioner] may reasonably draw from the evidence" will also be
23 upheld. *Mark v. Celebrezze*, 348 F.2d 289, 293 (9th Cir. 1965).
24 On review, the court considers the record as a whole, not just the
25 evidence supporting the decision of the Commissioner. *Weetman v.*
26 *Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989) (quoting *Kornock v.*
27 *Harris*, 648 F.2d 525, 526 (9th Cir. 1980)).

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1 It is the role of the trier of fact, not this court, to
2 resolve conflicts in evidence. *Richardson*, 402 U.S. at 400. If
3 evidence supports more than one rational interpretation, the court
4 may not substitute its judgment for that of the Commissioner.
5 *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579
6 (9th Cir. 1984). Nevertheless, a decision supported by
7 substantial evidence will still be set aside if the proper legal
8 standards were not applied in weighing the evidence and making the
9 decision. *Browner v. Secretary of Health and Human Services*, 839
10 F.2d 432, 433 (9th Cir. 1987). Thus, if there is substantial
11 evidence to support the administrative findings, or if there is
12 conflicting evidence that will support a finding of either
13 disability or nondisability, the finding of the Commissioner is
14 conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir.
15 1987).

16 ALJ'S FINDINGS

17 The ALJ found at step one that Plaintiff has not engaged in
18 substantial gainful activity since her alleged onset date, October
19 19, 2001. (AR 17). At step two, the ALJ determined that
20 Plaintiff has the severe impairments of history of hip and lumbar
21 fractures, cervical strain, scoliosis and degenerative disc
22 disease of the lumbar spine, but that she does not have an
23 impairment or combination of impairments listed in or medically
24 equal to one of the Listings impairments. (AR 18-19).

25 The ALJ concluded that Plaintiff has the residual functional
26 capacity ("RFC") to perform light exertion level work, with
27 additional restrictions. (AR 19). He found that Plaintiff is
28 able to perform light work but she is limited to standing and

1 walking for no more than 30 to 60 minutes at a time. (AR 19-20).
2 At step four of the sequential evaluation process, the ALJ found
3 that, based on Plaintiff's RFC, she could perform her past
4 relevant work as a music dubber as previously performed. (AR 22-
5 23). Accordingly, the ALJ determined at step four of the
6 sequential evaluation process that Plaintiff was not disabled
7 within the meaning of the Social Security Act. (AR 23-24).

8 ISSUES

9 Plaintiff contends that the Commissioner erred as a matter of
10 law. Specifically, she argues that:

11 1. The ALJ erred by rejecting the opinions of Plaintiff's
12 treating physician, Robert M. Burton, M.D.; and

13 2. The ALJ erred by failing to provide clear and convincing
14 reasons for rejecting Plaintiff's testimony.

15 This Court must uphold the Commissioner's determination that
16 Plaintiff is not disabled if the Commissioner applied the proper
17 legal standards and there is substantial evidence in the record as
18 a whole to support the decision.

19 DISCUSSION

20 **A. Treating Physician**

21 Plaintiff contends that the ALJ improperly rejected the
22 opinions of treating physician Robert M. Burton, M.D. (Ct. Rec.
23 12-1, pp. 14-17). In a disability proceeding, the treating
24 physician's opinion is given special weight because of his
25 familiarity with the claimant and the claimant's physical
26 condition. *Fair v. Bowen*, 885 F.2d 597, 604-05 (9th Cir. 1989).
27 To reject the treating physician's opinion, the ALJ must state
28 specific, legitimate reasons that are supported by substantial

1 evidence. *Flaten v. Secretary of Health and Human Serv.*, 44 F.3d
2 1453, 1463 (9th Cir. 1995); *Fair*, 885 F.2d at 605. If
3 uncontradicted by other medical opinions, the treating physician's
4 opinion may not be rejected unless the ALJ provides clear and
5 convincing reasons. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.
6 1995). The Commissioner responds that the ALJ properly rejected
7 the disability findings and limitation opinions of Dr. Burton by
8 providing clear and convincing reasons supported by substantial
9 evidence. (Ct. Rec. 18, pp. 12-18). The undersigned agrees.

10 Dr. Burton indicated in an August 12, 2002 letter to
11 Plaintiff's attorney at the time that Plaintiff would not be able
12 to sustain work activity day in and day out, eight hours per day,
13 five days a week, without absences greater than two days per
14 month. (AR 286). Dr. Burton indicated in this letter that he
15 believed Plaintiff was disabled according to the definitions
16 employed by the Social Security Administration. (AR 286).

17 On March 25, 2004, Dr. Burton filled out a form provided by
18 Plaintiff's attorney at the time. (AR 456-457). Dr. Burton
19 indicated in the space provided on the questionnaire that
20 Plaintiff was not able to sustain light or sedentary work. (AR
21 457). Dr. Burton stated that Plaintiff's diagnoses were
22 persistent pelvic, pubic, and sacral fracture pain, diabetes,
23 fibromyalgia, asthma, and poor tolerance of psychological stress,
24 her symptoms consisted of persistent pain and fatigue worsened by
25 stress, and the objective medical findings upon which his
26 diagnoses were based were "x-rays, labs, BP, etc." (AR 456).

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1 On May 25, 2004, Dr. Burton again filled out a questionnaire
2 form provided by Plaintiff's attorney at the time. (AR 472-473).
3 Dr. Burton indicated that he based his diagnoses on a March 1996
4 sacral MRI as well as other films in Dr. McNabb's possession. (AR
5 472). Dr. Burton opined that, as a result of Plaintiff's
6 impairments, she could not sustain standing or walking for more
7 than 30 to 60 minutes throughout an eight hour workday. (AR 473).
8 He further opined that she was not capable of light work for
9 physical reasons and that she does not have the background
10 experience, temperament or psychological hardiness suitable for
11 the demands of sedentary work. (AR 473). Yet, Dr. Burton also
12 answered that Plaintiff was able to lift and carry objects
13 weighing up to 20 pounds. (AR 473).

14 On October 12, 2004, Dr. Burton filled out another form
15 provided by Plaintiff's counsel. (AR 478). Dr. Burton indicated
16 on this questionnaire that Plaintiff could stand 30 to 60 minutes
17 at one time and twice total for a maximum of two hours in an eight
18 hour work day. (AR 478). He additionally opined that Plaintiff
19 could walk five to 10 minutes at one time, with a maximum of 90
20 minutes in an eight hour work day. (AR 478).

21 The ALJ rejected Dr. Burton's RFC opinions noting that he was
22 very non-specific about supporting objective medical evidence, his
23 opinions were provided by merely checking a form with little
24 substantiation, and the opinions were vocationally based. (AR
25 20).

26 As noted by the ALJ, Dr. Burton was "very non-specific about
27 citing any objective medical findings" to support his conclusions.
28 (AR 20). On the March 25, 2004 questionnaire form, Dr. Burton

1 stated that the objective medical findings upon which his
2 diagnoses were based were "x-rays, labs, BP, etc." (AR 456). On
3 the May 25, 2004 form, Dr. Burton indicated that he based his
4 diagnoses on a March 1996 sacral MRI as well as "other films in
5 Dr. McNabb's possession." (AR 472). These vague references to
6 medical evidence fail to support Dr. Burton's severe limitation
7 findings.

8 An ALJ may discredit a treating physician's opinion that is
9 conclusory, brief, and unsupported by the record as a whole or by
10 objective medical findings. *Batson v. Commissioner of Social*
11 *Security Administration*, 359 F.3d 1190, 1195 (9th Cir. 2004) (ALJ
12 properly gave minimal weight to a treating physician's opinion,
13 because it was based on the claimant's subjective complaints
14 without objective evidence, was conclusionary in the form of a
15 check-list, and lacked substantive medical findings to support her
16 conclusion); *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir.
17 2001) (ALJ properly rejected a treating physician's opinion
18 because it was unsupported by rationale or treatment notes and
19 offered no objective medical findings to support the existence of
20 the claimant's alleged conditions).

21 The x-rays of which Dr. Burton cited apparently refers to a
22 June 7, 2001 x-ray which revealed an "old healed" pubic fracture,
23 mild degenerative disc disease and mild scoliosis.¹ (AR 270).
24 The March 19, 1996 MRI revealed several sacral fractures; however,
25 the MRI was performed over 10 years ago and soon after Plaintiff's

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27 ¹It is significant to note that, with regard to the June 7, 2001 x-ray,
28 Plaintiff's treating physician, Craig D. McNabb, M.D., indicated that he
really did not see any acute pathology from the x-ray. (AR 260). He
recommended that she continue working and not change her current treatment
plan. (AR 260).

1 car accident. (AR 273). These records do not document functional
2 limitations stemming from the injuries, Dr. Burton does not cite
3 objective evidence obtained from his own examinations in support
4 of the functional limitations he found, and the injuries did not
5 prevent Plaintiff from continuing to work, as she continued to
6 work until October 19, 2001. (AR 163). Dr. Burton failed to
7 provide adequate objective medical evidence to substantiate the
8 conclusory opinions he gave on the questionnaire forms.

9 The ALJ also noted that in the March 25, 2004 questionnaire,
10 Dr. Burton merely checked the form, marking "No" in response to
11 questions as to whether Plaintiff could sustain light or sedentary
12 work. (AR 20, 457). A check-box form is entitled to little
13 weight. *Crane v. Shalala*, 76 F.3d 251, 253 (9th Cir. 1996)
14 (stating that the ALJ's rejection of a check-off report that did
15 not contain an explanation of the bases for the conclusions made
16 was permissible). Dr. Burton failed to adequately explain the
17 bases for the severe functional limitation he described.

18 Dr. Burton's conclusions that Plaintiff is disabled and
19 unable to perform light or sedentary level work is also not
20 supported by the weight of the evidence of record. On June 7,
21 2001, Plaintiff's treating physician, Craig D. McNabb, M.D., saw
22 Plaintiff for consultation for low back pain. (AR 259-260). Dr.
23 McNabb indicated that he did not see any acute pathology from the
24 x-rays that were performed and recommended that she continue with
25 work. (AR 260). On February 18, 2002, Plaintiff was examined by
26 K. Clair Anderson, M.D. (AR 248-251). Dr. Anderson indicated
27 that Plaintiff had no significant objective findings and opined
28 that Plaintiff does not have a major orthopedic problem of the

1 spine. (AR 251). On June 10, 2002, a medical consultant, Marin
2 Kehrl, M.D., reviewed the record and indicated that Plaintiff
3 retains the capacity for at least medium level work. (AR 285).
4 A physical residual functional capacity assessment form was filled
5 out by a state agency reviewing physician, Sharon Eder, M.D., on
6 October 10, 2002. (AR 398-405). The reviewing physician opined
7 that Plaintiff could occasionally lift and carry 20 pounds,
8 frequently lift and carry 10 pounds, stand and/or walk and sit
9 about six hours each in an eight hour workday, push and pull
10 without restriction and had postural limitations which
11 occasionally limited her. (AR 399-400).² Dr. McNabb examined
12 Plaintiff on July 7, 2003 for continuing low back pain. (AR 413-
13 414). Dr. McNabb recommended a long-acting narcotic medication to
14 treat her pain, but did not mention any functional limitations as
15 a result of Plaintiff's complaints of back pain. (AR 414). On
16 January 4, 2005, John Place, M.D., examined Plaintiff, reviewed
17 July 2003 x-rays, and conducted new x-rays of Plaintiff's pelvis
18 and hips. (AR 495-496). Dr. Place indicated that the x-rays
19 showed evidence of an old healed superior and inferior pubic ramus
20 fracture on the right, and a pubic fracture of the left, with an
21 intact pelvic rim and normal relationship at the sacroiliac
22 joints. (AR 495). The hip joints were normal and symmetrical.
23 (AR 495). Dr. Place noted that Plaintiff's hip joints were both
24 normal in appearance on x-ray, and her hip motion was essentially
25 symmetrical. (AR 496). He advised Plaintiff "to remain active
26 and encouraged in walking, exercise, etc." (AR 496). No other

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28 ²It is significant to note that, in her October 2002 report, Dr. Eder
indicated that Plaintiff was working 22 hours per week and was "last seen
4/02 in Ortho w/o problems to back." (AR 403).

1 physician of record has opined that Plaintiff is disabled or as
2 physically limited as described in the questionnaire forms
3 completed by Dr. Burton.

4 Finally, it was additionally proper for the ALJ to reject Dr.
5 Burton's opinion as vocationally-based. Although a physician may
6 make statements regarding what a Plaintiff can still do despite
7 her impairments and her physical or mental restrictions, the final
8 responsibility for deciding the issue of disability is reserved to
9 for the Commissioner. A statement by a medical source that a
10 claimant is "disabled" or "unable to work" does not mean that the
11 Commissioner will determine that a claimant is disabled as defined
12 by the Social Security Act. 20 C.F.R. § 416.916(e)(1). Opinions
13 concerning the ultimate issue of disability are reserved for the
14 Commissioner.

15 It is the responsibility of the ALJ to determine credibility,
16 resolve conflicts in medical testimony and resolve ambiguities.
17 *Saelee v. Chater*, 94 F.3d 520, 522 (9th Cir. 1996). The Court
18 thus has a limited role in determining whether the ALJ's decision
19 is supported by substantial evidence and may not substitute its
20 own judgment for that of the ALJ even if it might justifiably have
21 reached a different result upon de novo review. 42 U.S.C. §
22 405(g). In any event, the Court finds that the ALJ thoroughly
23 analyzed the evidence of record (AR 17-22) and provided clear and
24 convincing reasons for rejecting Dr. Burton's opinions that
25 Plaintiff was severely limited from a physical standpoint and
26 disabled. The ALJ did not err by rejecting the opinions of Dr.
27 Burton in this case.

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1 **B. Plaintiff's Credibility**

2 Plaintiff also argues that the ALJ erred by failing to
3 provide clear and convincing reasons for rejecting her testimony.
4 (Ct. Rec. 12-1, pp. 17-19). The Commissioner responds that, based
5 on Plaintiff's daily activities, work history and the objective
6 medical evidence, the ALJ properly determined that Plaintiff's
7 testimony was unconvincing. (Ct. Rec. 18, pp. 6-12).

8 It is the province of the ALJ to make credibility
9 determinations. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir.
10 1995). However, the ALJ's findings must be supported by specific
11 cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir.
12 1990). Once the claimant produces medical evidence of an
13 underlying impairment, the ALJ may not discredit her testimony as
14 to the severity of an impairment because it is unsupported by
15 medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir.
16 1998) (citation omitted). Absent affirmative evidence of
17 malingering, the ALJ's reasons for rejecting the claimant's
18 testimony must be "clear and convincing." *Lester v. Chater*, 81
19 F.3d 821, 834 (9th Cir. 1995). In this case, the ALJ found that
20 Plaintiff's allegations regarding her limitations were not totally
21 credible. (AR 21-23).

22 The ALJ indicated that Plaintiff's description of limited
23 daily activities was inconsistent with the record evidence. (AR
24 21). It is well-established that the nature of daily activities
25 may be considered when evaluating credibility. *Fair*, 885 F.2d at
26 603. As noted by the ALJ, Plaintiff testified that each day she
27 spends four to five hours doing her housework. (AR 21, 68). She
28 stated that she continues to do vacuuming, sweeping, laundry and

1 dishwashing. (AR 21, 68). The ALJ also noted a May 2001 report
2 which indicated that Plaintiff performs household chores weekly,
3 works doing laundry and was taking care of a nine-month old child.
4 (AR 21, 242). As noted by the Commissioner, the work-like nature
5 of Plaintiff's daily activities was particularly relevant because
6 Plaintiff alleged she could no longer perform similar activities.
7 (Ct. Rec. 18, pp. 8-9). It was entirely proper for the ALJ to
8 consider Plaintiff's reported daily activities when evaluating
9 Plaintiff's credibility.

10 The ALJ also noted that Plaintiff's allegation of disability
11 was inconsistent with the medical reports of record. (AR 21). As
12 noted in Section A, on June 7, 2001, Dr. McNabb indicated that he
13 did not see any acute pathology from the x-rays that were
14 performed and recommended that she continue with work. (AR 260).
15 On February 18, 2002, Dr. Anderson indicated that Plaintiff had no
16 significant objective findings and opined that Plaintiff does not
17 have a major orthopedic problem of the spine.³ (AR 251). On June
18 10, 2002, Dr. Kehrli, reviewed the record and indicated that
19 Plaintiff retains the capacity for at least medium level work.
20 (AR 285). A physical residual functional capacity assessment form
21 filled out by a state agency reviewing physician on October 10,
22 2002, indicated that Plaintiff could occasionally lift and carry
23 20 pounds, frequently lift and carry 10 pounds, stand and/or walk
24 and sit about six hours in an eight hour workday, and push and

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28 ³The ALJ noted that Dr. Anderson's examination revealed that Plaintiff
had a normal gait and a level pelvis, she was able to heel/toe walk normally,
her motor power was intact and her reflexes were equal and symmetrical.
(AR 21).

1 pull without restriction. (AR 399). As noted by the ALJ, Dr.
2 McNabb's July 7, 2003 examination revealed that Plaintiff was able
3 to ambulate about the medical office and that she had good
4 strength throughout her lower extremities. (AR 21, 413). On
5 January 4, 2005, Dr. Place noted that Plaintiff's hip joints were
6 both normal in appearance on x-ray, and her hip motion was
7 essentially symmetrical. (AR 496). He advised Plaintiff to
8 remain active and encouraged her to walk and otherwise exercise.
9 (AR 496). The weight of the medical evidence of record is simply
10 inconsistent with Plaintiff's claim of disabling limitations.

11 Lastly, the ALJ indicates that Plaintiff's work history
12 erodes her claim of a physical inability to perform work
13 activities. (AR 21). An ALJ may consider a claimant's work
14 record as a factor when evaluating credibility. *Light v. Social*
15 *Security Administration*, 119 F.3d 789, 792 (9th Cir. 1997); *Smolen*
16 *v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996). As noted by the
17 ALJ, while Plaintiff alleges debilitating pain has existed since
18 her 1995 motor vehicle accident, she continued to work as a
19 janitor until at least October of 2001.⁴ (AR 21). Plaintiff
20 described this work as consisting of cleaning buildings for eight
21 hours a night, standing/walking for the majority of the shift,
22 carrying and lifting trash six times a night, and mopping and
23 vacuuming for at least two-thirds of her shift. (AR 21-22, 164).
24 The ALJ found it difficult to believe that Plaintiff had the
25 degree of pain alleged but was still able to perform at this level
26 of physical exertion. (AR 21).

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28 ⁴The Commissioner points out that, although Plaintiff asserts that she
required frequent rest during her shift, whatever rest Plaintiff needed, it
did not detract from her ability to work competently for a period of many
months. (Ct. Rec. 18, pp. 9-10).

1 The ALJ is responsible for reviewing the evidence and
2 resolving conflicts or ambiguities in testimony. *Magallanes v.*
3 *Bowen*, 881 F.2d 747, 751 (9th Cir. 1989). It is the role of the
4 trier of fact, not this Court, to resolve conflicts in evidence.
5 *Richardson v. Perales*, 402 U.S. 389, 400 (1971). The Court has a
6 limited role in determining whether the ALJ's decision is
7 supported by substantial evidence and may not substitute its own
8 judgment for that of the ALJ even if it might justifiably have
9 reached a different result upon de novo review. 42 U.S.C. §
10 405(g). After reviewing the record, the undersigned finds that
11 the ALJ appropriately specified clear and convincing reasons for
12 finding that Plaintiff's allegations were not fully credible in
13 this case.

14 CONCLUSION

15 Having reviewed the record and the ALJ's conclusions, this
16 Court finds that the ALJ's decision that Plaintiff is capable of
17 performing a modified light level of physical exertion work,
18 including her past job as a music dubber, is supported by
19 substantial evidence and free of legal error. Plaintiff is thus
20 not disabled within the meaning of the Social Security Act.
21 Accordingly,

22 **IT IS ORDERED:**

23 1. Plaintiff's Motion for Summary Judgment (**Ct. Rec.**
24 **12**) is **DENIED**.

25 2. Defendant's Motion for Summary Judgment (**Ct. Rec.**
26 **17**) is **GRANTED**.

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DATED this 29th day of December, 2006.

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